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TRANSCRIPT OF PROCEEDINGS

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

In the Matter of:

WT DOCKET NO. 95-11

Application of

HERBERT L. SCHOENBOHN  
Kingshill, Virgin Islands

DOCKET FILE COPY ORIGINAL

for Amateur Station and  
Operator Licenses

DATE OF CONFERENCE: March 30, 1995

VOLUME: I

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PAGES: 1 - 29

FREE STATE REPORTING, INC.  
Court Reporting Depositions  
D.C. Area (301) 261-1902  
Balt. & Annap. (410) 974-0947

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
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HERBERT L. SCHOENBOHN )  
 Kingshill, Virgin Islands )

for Amateur Station )  
 and Operator Licenses )  
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DOCKET FILE COPY ORIGINAL

WT Docket No. 95-11

The above-entitled matter came on for prehearing  
 conference pursuant to Notice before Edward Luton,  
 Administrative Law Judge, at 2000 L Street, N.W., Washington,  
 D.C., in Courtroom No. 3 on Thursday, March 30, 1995, at 9:00  
 a.m.

**APPEARANCES:**

**Applicant:**

HERBERT L. SCHOENBOHM  
 pro se

On behalf of the Chief, Mass Media Bureau:

THOMAS FITZ-GIBBONS  
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 Washington, D.C. 20554

(202) 418-1321

**I N D E X**

Page

Opening Statements By: Judge Luton

5

Conference Began: 9:00 a.m.

Conference Ended: 9:35 a.m.

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## P R O C E E D I N G S

MR. FITZ-GIBBONS: We're going to call him.

JUDGE LUTON: If we are that means we're going to pay for the call. No, it should be his. That's the way we do this thing. As a matter of fact, this has been unusual all the way. Ordinarily, as I remember it, the applicant requests use of the speaker phone, makes a request of the Judge. The Judge goes through some rigmarole and issues an order in which it's usually stated that the applicant will pay for the call. This all came as a surprise to me. I didn't know anything about a speaker phone until I saw the schedule yesterday with a little asterisk by it indicating that this was to be a conference utilizing a speaker phone. So I wondered who set this thing up and apparently the Bureau did. Is that right?

MR. FITZ-GIBBONS: Well, Mr. Schoenbohm had indicated that he couldn't be present and he wanted to be present by speaker phone so I called your secretary.

JUDGE LUTON: Right. Well, I think Mr. Schoenbohm should have made the request over here so at least he could have been told that he's the one who pays. Government doesn't pay for these things. So anyway, Mr. Schoenbohm is sitting there in the Virgin Islands I assume waiting for us to call him now.

MR. FITZ-GIBBONS: Yes, that's correct, Your Honor.

JUDGE LUTON: Well, we'd better do something about

1 that.

2 MR. FITZ-GIBBONS: We can always call him collect,  
3 Your Honor.

4 JUDGE LUTON: Sure, if he'll accept the call. If he  
5 won't, well, we'll try something else. Who has his number?  
6 It's 9 o'clock now. It's time for us to go. Does the Bureau  
7 has Mr. Schoenbohm's number?

8 MR. FITZ-GIBBONS: Yes, it's --

9 JUDGE LUTON: Can you call him?

10 MR. FITZ-GIBBONS: Yes.

11 JUDGE LUTON: Please. Try collect and see if he'll  
12 accept.

13 MR. FITZ-GIBBONS: I don't think he's expecting a  
14 collect call, Your Honor.

15 JUDGE LUTON: Well, maybe a brief call to tell him  
16 that he's going to have to call us.

17 MR. FITZ-GIBBONS: Okay. Bear with me. Your Honor,  
18 shall I tell him that or do you want to --

19 JUDGE LUTON: Sure, you can tell him, or I can. It  
20 doesn't matter. Since you're going to be talking to him tell  
21 him that he's got to foot the bill. Also, all arrangements  
22 with the telephone company should have been made by him.

23 (Pause)

24 MR. FITZ-GIBBONS: Mr. Schoenbohm, this is Tom Fitz-  
25 Gibbons. The judge would like you to place the call. Yes.

1 Well, I guess you'd have to cross that bridge when you come to  
2 it. Well, the judge would like you to make the call.

3 JUDGE LUTON: I'll tell him if I must.

4 MR. FITZ-GIBBONS: I believe the judge would like to  
5 speak to you.

6 JUDGE LUTON: Mr. Schoenbohm?

7 MR. SCHOENBOHM: Yes, sir?

8 JUDGE LUTON: This is Judge Luton. We're here for  
9 the conference in -- on your application for Amateur Station  
10 Operator Licenses. I didn't know until yesterday that a  
11 request had come in though it never came to me.

12 MR. SCHOENBOHM: I can't -- I can just hear every  
13 third word or so. Could you speak just a little closer to  
14 the --

15 JUDGE LUTON: Sure, let me try. Let me try it this  
16 way. Can you hear me better? I didn't know until yesterday  
17 that a request had come in for use of a speaker phone at the  
18 conference. This was not done properly. The request should  
19 have come to me in which event I would at the very least have  
20 told you early that the arrangements -- that's correct, the  
21 arrangements with the telephone company would have to made by  
22 you and that the call would have to be at your expense. So  
23 we're telling you that now and hoping that you will call us  
24 back.

25 (Pause)

1 JUDGE LUTON: Well, it may be tremendous or it may  
2 not, but whatever it is, the government does not pay. Okay?  
3 So, we'll sit here and wait for you to call us back. Yes,  
4 please. Thank you. It's only when he calls that we -- is  
5 that right?

6 (Pause)

7 (Phone ringing.)

8 JUDGE LUTON: Hello?

9 MR. SCHOENBOHM: Yes, I'm here.

10 JUDGE LUTON: Good, Mr. Schoenbohm. We're here too.  
11 Let's start the conference. I'm going to ask for appearances.  
12 Mr. Schoenbohm, you'll be appearing on your own behalf, of  
13 course, by speaker phone. And for the Bureau who's appearing?

14 MR. FITZ-GIBBONS: Tom Fitz-Gibbons for the Bureau.

15 MR. REIDELER: Terrence E. Reideler for the Bureau,  
16 Your Honor.

17 MR. SCHOENBOHM: Could you spell the last name,  
18 Mr. Reideler?

19 MR. REIDELER: R-E-I-D-E-L-E-R.

20 MR. SCHOENBOHM: R-E-I--

21 MR. REIDELER: D-E-L-E-R.

22 MR. SCHOENBOHM: I have it.

23 JUDGE LUTON: The hearing designation order has set  
24 this case for hearing on June the 13th, 1995. That is a date  
25 which will not change. Now, moving up to that date, we're

1 going to need to establish a couple of other dates depending  
2 on what it is that we might face in this case. Since the  
3 designation order, Mr. Schoenbohm, placed both burdens of  
4 proceeding and proof upon the applicant, I want to ask you  
5 what kind of case do you intend to present? That is, what by  
6 way of evidence? I don't need to know the particulars but I  
7 need to know if you're going to present witnesses on your  
8 behalf, for example, because if you are that'll require me to  
9 set a date for the submission of the testimony -- the proposed  
10 testimony of those witnesses in writing.

11 MR. SCHOENBOHM: I see.

12 JUDGE LUTON: This is what we call exhibits in this  
13 case.

14 MR. SCHOENBOHM: Could I not waive the appearance of  
15 any witnesses in exchange for affidavits or certifications in  
16 lieu of affidavits or statements?

17 JUDGE LUTON: Well, that may be difficult because  
18 the Bureau would have no opportunity to cross-examine  
19 affidavits, obviously.

20 MR. SCHOENBOHM: But I would be faced with the peril  
21 of, of the certification or the affidavit of making a false  
22 statement before the Commission and of course as you know the  
23 sanctions for that are very heavy.

24 JUDGE LUTON: But before we even get there a  
25 judgment is going to have to be made in this case on the basis

1 of the evidence that is taken in here. While you may be  
2 correct about the arrangements for false statements down the  
3 line --

4 MR. SCHOENBOHM: Or false material or --

5 JUDGE LUTON: Material.

6 MR. SCHOENBOHM: -- false evidence.

7 JUDGE LUTON: The Bureau has the right to test in  
8 hearing any evidentiary submission that an applicant makes and  
9 it does that through cross-examination and I don't see how --  
10 well, obviously cross-examination cannot occur.

11 MR. SCHOENBOHM: All right, but if these submissions  
12 are made in advance of this and if there's anything that's  
13 contested that's not stipulated or accepted by the Commission  
14 as being factual or a factual statement or a factual record,  
15 they may not wish to test it or to -- and if they do then, of  
16 course, I'll have to go to the next step.

17 JUDGE LUTON: Which would be to bring, bring forth  
18 the witnesses or reconsider offering that evidence.

19 MR. SCHOENBOHM: Yeah, this, this becomes, this  
20 becomes a very, very interesting logistical problem because  
21 most of the witnesses are here in the community in the Virgin  
22 Islands and as you know we're several thousand miles away.

23 JUDGE LUTON: How many witnesses are you  
24 contemplating?

25 MR. SCHOENBOHM: Several dozen.



1 JUDGE LUTON: Several dozen?

2 MR. SCHOENBOHM: They're public officials, the  
3 governor, the lieutenant governor, the chief of police, that  
4 can attest -- or that I expect to act to attest to my  
5 qualifications.

6 JUDGE LUTON: Um-hum.

7 MR. SCHOENBOHM: People in the community that have  
8 assisted. That seems to be an issue at hand so I --

9 JUDGE LUTON: Well --

10 MR. SCHOENBOHM: If it is a contested issue then I'd  
11 like to be able to establish the fact that, that these proofs  
12 exist. If those -- first of all, I should ask what are the  
13 qualification requirements, what are the standards? What do I  
14 have to meet, what are the burdens? Maybe I should do that  
15 with an interrogatory or something and find, find out as this  
16 may not be appropriate in a prehearing conference to find out  
17 what those burdens are.

18 JUDGE LUTON: No, I'm certainly not going to try to  
19 tell you. The designation order referenced several things  
20 that if read I'm sure would give you some idea of what you're  
21 facing, what you're up against.

22 MR. SCHOENBOHM: Well, Mr. Luton, they, they cite  
23 broadcast language, public interest -- and I'm not aware that  
24 I go under the same requirements after reading basis, purpose  
25 and scope under Part 97 --

1 MR. SCHOENBOHM: Well, that might be one of the  
2 legal arguments that you'll wish to raise at some point.

3 MR. SCHOENBOHM: But I'd like to know what I'm faced  
4 -- what burdens I'm faced with so I could meet those burdens,  
5 if that's --

6 JUDGE LUTON: Now, who do you want to tell you that?

7 MR. SCHOENBOHM: The Commission.

8 JUDGE LUTON: Who in the Commission?

9 MR. SCHOENBOHM: Well, I think that would be your  
10 position because you have to judge the merits of the  
11 arguments.

12 JUDGE LUTON: I'm going to make a judgment on the  
13 basis of what's presented to me. I'm not going to be in the  
14 position of handing out legal advice, quite frankly, or  
15 interpretations of the rules in an effort to guide an  
16 applicant through the process. That is not my role.

17 MR. SCHOENBOHM: I understand.

18 JUDGE LUTON: I beg to differ with you. Well --

19 MR. SCHOENBOHM: I didn't want to suggest that it  
20 was your role. I just thought that, that there would be some  
21 standard that is applicable to this particular litigation.

22 JUDGE LUTON: Well, I think maybe there are. I  
23 can't imagine that the Commission would have set about on this  
24 process considering a license unless at least the Commission  
25 had in mind some standard by which any evidence shown is to be

1 measured. Mr. Schoenbohm, I think this is all theoretical.  
2 This is fluff argument here. There are standards. It's going  
3 to up to you to discover them and to respond to them. That's  
4 as far as I'm prepared to go this morning.

5 MR. SCHOENBOHM: All right, but you will permit  
6 discovery then?

7 JUDGE LUTON: Well, discovery against the Bureau is  
8 a tricky matter. It is something that is not ordinarily  
9 permitted. I'm not going to tell you now that I will permit  
10 discovery. I'm going to suggest that you take a look at the  
11 Commission's rules having to do with discovery where the  
12 Bureau is concerned and make your own judgment. I'm not  
13 telling you now that yes, I will permit discovery of the  
14 Bureau. That is not something that I can ordinarily do.

15 MR. SCHOENBOHM: All right.

16 JUDGE LUTON: I want to get back to  
17 the -- well, I think rather than, than trying to ad hoc this  
18 thing I'm going to proceed the way that we normally proceed in  
19 every other case, and that is I'm going to set dates for the  
20 submission of exhibits. By exhibits I'm meaning in this case  
21 the testimony of witnesses. I'm going to ask that that  
22 testimony be reduced to writing and that it be exchanged --  
23 that it rather be -- well, I don't know whether the Bureau  
24 intends to make evidentiary submissions or not, but  
25 Mr. Schoenbohm, I'm telling you that your witnesses' testimony

1 in written form is to be submitted to the Bureau and to me by  
2 May 23, 1995. After the Bureau has had an opportunity to take  
3 a look at those submissions it'll make its own judgments about  
4 what witnesses that you propose to present, Mr. Schoenbohm,  
5 that the Bureau would like to cross-examine. It will notify  
6 you and that will be your obligation to produce those  
7 witnesses.

8           Now, since you apparently envision quite an  
9 elaborate case with, as you tell, me several dozens of  
10 witnesses, I think you and the Bureau are going to find  
11 yourselves talking with one another about at least a couple of  
12 things. One is relevance. It's difficult for me, quite  
13 frankly, to see how several dozens of witnesses can be  
14 relevant to what we're faced with here in this case. And I  
15 think you and the Bureau will also talk to one another about  
16 which of those many witnesses rightfully ought to be brought  
17 in here for cross-examination. To the extent that  
18 stipulations can be reached, between yourself and the Bureau,  
19 so that witnesses won't have to be brought in here, that's  
20 another matter that's easily handled. Chances are those  
21 evidentiary offerings will be accepted. Chances are, but I  
22 make no commitment in that regard.

23           And I'm going to ask that the Bureau give notice to  
24 Mr. Schoenbohm of those proposed witnesses that the Bureau  
25 wishes to examine by June the 6th. And then on June 13th, a

1 week later, we'll go to hearing.

2           So as I have arranged it, we go to hearing on the  
3 13th, witnesses are notified about a week prior to that,  
4 exhibits are exchanged two weeks prior to June the 6th, on May  
5 the 23rd. Mr. Schoenbohm, do you have anything else?

6           MR. SCHOENBOHM: I certainly do. I wanted to find  
7 out what -- you made a statement that you, you did not think  
8 that several dozen witnesses would all have something material  
9 to this proceeding, and I think that I'm entitled to find out  
10 what the litigants in this matter consider material, what they  
11 consider probative, what they consider something that they  
12 want to look into. I'm in a little bit of a loss to find out  
13 what standards, what matters that they're looking for.  
14 They're the ones that requested the hearing and there is a  
15 burden of me to meet some kind of qualifications that are not  
16 established or that haven't been revealed to me and I'd like  
17 to find out what, what burdens I must meet.

18           JUDGE LUTON: Mr. Schoenbohm, the only instructions  
19 that are going to guide us in this case are the matters stated  
20 in the hearing designation order. That is our charter, that  
21 is what you and the rest of us are up against. You don't know  
22 what those standards are, you're going to have to find out.

23           MR. SCHOENBOHM: By which process?

24           JUDGE LUTON: That'll be up to you, Mr. Schoenbohm.

25           MR. SCHOENBOHM: You must agree that these things

1 | should be made as easy as possible to be found out so there's  
2 | not a waste of time and waste of your resources and there must  
3 | be some way that this can be simplified.

4 | JUDGE LUTON: Well --

5 | MR. SCHOENBOHM: I have a problem right now because  
6 | I would like to correct, correct the record. The record is  
7 | factually incorrect, but it -- and it continues to become even  
8 | more factually incorrect as additional motions are filed by  
9 | the, by the Bureau. And if I could speak specifically to  
10 | something on that issue, the original action had an incorrect  
11 | citation of the statute, the subsequent motion for summary  
12 | judgment has a correct citation of the statute and I'd like to  
13 | have everything corrected so we're talking about the same  
14 | thing and --

15 | JUDGE LUTON: Are you saying that there is some  
16 | error in the designation order?

17 | MR. SCHOENBOHM: The designation order cites the  
18 | statute Section 1029 and states that it requires use in  
19 | interstate commerce. Reading the statute, it does not require  
20 | a use in interstate commerce, it requires an effect on  
21 | interstate commerce.

22 | JUDGE LUTON: Well --

23 | MR. SCHOENBOHM: And this is a crucial element to  
24 | the offense which --

25 | JUDGE LUTON: Okay.

1 MR. SCHOENBOHM: -- for which this action has a  
2 nexus to. And in the motion for summary judgment, that I just  
3 received yesterday by fax, it has the correct citation of the  
4 statute.

5 JUDGE LUTON: I don't know anything about any motion  
6 for summary judgment. Is this something that the Commission  
7 sent to you?

8 MR. SCHOENBOHM: It faxed me yesterday, it says "To  
9 Administrative Law Judge Edward Luton."

10 JUDGE LUTON: It hasn't yet been received by me. I  
11 don't know what that's about.

12 MR. SCHOENBOHM: But my point is, there is --I, I  
13 would like to be able to correct the record, the factual  
14 errors that are just simply wrong as a matter of fact and  
15 as a --

16 JUDGE LUTON: All right.

17 MR. SCHOENBOHM: And I would like to know if there  
18 is some vehicle for me insisting that we are all talking the  
19 same language.

20 JUDGE LUTON: Well, what I can tell you is that my  
21 position in the Commission's hierarchy is such that I cannot  
22 change the hearing designation order either to correct it or  
23 modify or it or do anything else. There is a way that it can  
24 be done, but it's got to be according to the rules. What are  
25 those rules? You'll have to look and find out,

1 Mr. Schoenbohm. If you've got difficulties with the hearing  
2 designation order --

3 MR. SCHOENBOHM: Well, I've raised those --

4 JUDGE LUTON: If you had legal representation,  
5 presumably your lawyer would know how to go about it. But  
6 surely --

7 MR. SCHOENBOHM: I can't afford that, sir.

8 JUDGE LUTON: -- discussing it with me isn't going  
9 to result in any change at all because I am powerless to  
10 change it.

11 MR. SCHOENBOHM: But I filed a motion to, to make  
12 these corrections. Have you received a copy of that?

13 JUDGE LUTON: Mr. Schoenbohm, you didn't file a  
14 motion with me did you?

15 MR. SCHOENBOHM: I said attention Administrative Law  
16 Judge and three copies to the secretary.

17 JUDGE LUTON: I think you're talking about something  
18 that was received by the Commission on February 22, 1995, it's  
19 directed to the Commission, attention Enforcement Division,  
20 Wireless Telecommunications Bureau, Room 5322. That's not the  
21 Administrative Law Judge. As a matter of fact, I have a copy  
22 of something called "Motion to Dismiss Hearing Designation  
23 Order or in the Alternative Hold the Action in Abeyance Until  
24 the Legality of the Conviction Now Before the District Court  
25 Which the FCC Action is Based Upon Can Be Determined." Is



1 that what you're talking about?

2 MR. SCHOENBOHM: That's correct. Is that not before  
3 you?

4 JUDGE LUTON: It was never filed with me. How did I  
5 get it? Happenstance. Chief Judge somehow came up with a  
6 copy. Of course he didn't do anything with it except turn it  
7 over to me and of course I'm prepared to ignore it since it  
8 wasn't properly filed with me. I see all the arguments that  
9 you make in here but I'm not going to do anything with them.  
10 I don't even know that the Bureau has reacted to this thing at  
11 all, or even if it should, whether in the Bureau's view this  
12 thing is properly filed or not. It just may be an improper  
13 pleading in which event it is disposed of by simply dismissing  
14 it.

15 MR. SCHOENBOHM: So, that's your determination?

16 JUDGE LUTON: I beg your pardon?

17 MR. SCHOENBOHM: Is that your determination, that  
18 it's being dismissed?

19 JUDGE LUTON: It isn't even filed with me. I, I  
20 would have to dismiss it and I will dismiss it formally since  
21 it's not properly filed. It's not addressed to me, it's not  
22 done in accord with the Commission's rules. I think I'd be  
23 quite justified in dismissing it which I will do. That's my  
24 determination in that regard.

25 MR. SCHOENBOHM: Are you dismissing it with or

1 without prejudice?

2 JUDGE LUTON: And what does that mean to you? With  
3 prejudice means that you couldn't file it again?

4 MR. SCHOENBOHM: That's correct.

5 JUDGE LUTON: It hasn't been filed in the first  
6 place as far as I'm concerned so I wouldn't, wouldn't presume  
7 to prevent you from making a proper filing by dismissing an  
8 improper one.

9 MR. SCHOENBOHM: All right.

10 JUDGE LUTON: The arguments that you've made in that  
11 paper and the ones that you've prepared -- you seem prepared  
12 to make this morning really constitute challenges to the  
13 hearing designation order. That isn't going to work before me  
14 because I'm powerless to change the designation order. You're  
15 going to have to discover a way to go about challenging the  
16 designation order in accordance with the Commission's rules,  
17 to the extent that such challenges are even permitted. It  
18 ain't easy in my experience. That's all I can tell you about  
19 that. You want to know about standards, what standards to you  
20 have to meet. Again, if you had legal representation, a  
21 lawyer experienced in this business might be able to help you.  
22 But you can't expect to get guidance -- that kind of guidance,  
23 certainly not from me. I'm a neutral in this thing. I'm not  
24 positioned to advise.

25 MR. SCHOENBOHM: Would you be able to grant a

1 request to proceed in forma pauperis?

2 JUDGE LUTON: I don't know. I think the  
3 Commission's rules do provide for such a motion -- such a  
4 request. If the appropriate showing can be made, of course  
5 I'd proceed in accordance with the Commission's rules. I can  
6 tell you that much.

7 MR. SCHOENBOHM: Is that request directed to you or  
8 directed to the Commission?

9 JUDGE LUTON: I believe it's directed to me. I  
10 think you -- you've got to take a look at the rules,  
11 Mr. Schoenbohm. You know, the Chief Judge sent out an order  
12 here which concludes by saying all parties are put on notice  
13 that they are expected to be fully cognizant of Part 1 of the  
14 Commission's rules and regulations concerning practice and  
15 procedure. That language has meaning, Mr. Schoenbohm.

16 MR. SCHOENBOHM: I know it does, and I have read  
17 Part 1 as best I could understand it as a layman.

18 JUDGE LUTON: Well, I think maybe there is something  
19 in there about proceeding in forma pauperis. I believe there  
20 is, so if you want to make that kind of motion or any other  
21 kind of motion, just make sure that it's directed to the  
22 proper place. That proper place now is me and I'll rule --

23 MR. SCHOENBOHM: All right.

24 JUDGE LUTON: -- fairly in accordance with the  
25 Commission's rules as I understand them.

1 MR. SCHOENBOHM: That sounds reasonable.

2 JUDGE LUTON: Mr. Fitz-Gibbons, does the Bureau have  
3 anything that it wishes to contribute here?

4 MR. FITZ-GIBBONS: Your Honor, the Bureau's case is  
5 going to consist of the court papers concerning  
6 Mr. Schoenbohm's conviction. We don't plan on having any  
7 other witnesses or exhibits in our direct case. However,  
8 we -- if Mr. Schoenbohm calls witnesses we may have some  
9 rebuttal witnesses and rebuttal exhibits.

10 JUDGE LUTON: Well, that'll depend on what might be  
11 shown on Mr. Schoenbohm's direct whether you want rebuttal  
12 witnesses.

13 MR. FITZ-GIBBONS: Yes, Your Honor.

14 JUDGE LUTON: But in the first instance, the Bureau  
15 does not intend to call any witnesses. Instead, it intends to  
16 rely solely on the court papers having to do with what the  
17 designation order calls Mr. Schoenbohm's conviction?

18 MR. FITZ-GIBBONS: Yes, Your Honor.

19 MR. REIDELER: Well, Your Honor, we might add that  
20 the way it appears at this moment. Perhaps --

21 JUDGE LUTON: May change.

22 MR. REIDELER: -- may change before May 23rd.

23 JUDGE LUTON: All right, but at the present time,  
24 that's all I'm asking, how do you see it at present. I  
25 realize that things may change on both sides and that's quite

1 all right. If that should happen we'll work it out. Is there  
2 anything else from the Bureau?

3 MR. FITZ-GIBBONS: Your Honor, I'd like to clarify  
4 that we did file a motion for summary decision yesterday and a  
5 copy was brought over here yesterday afternoon.

6 JUDGE LUTON: Okay. Just hasn't gotten to me yet.  
7 It's still early in the day here. I'll take a look at it.  
8 Motion for summary decision on what, the entire case, a  
9 portion of it or what?

10 MR. FITZ-GIBBONS: The entire case, Your Honor.

11 JUDGE LUTON: The entire case. Mr. Schoenbohm,  
12 again, I don't know how carefully you read the rules or how  
13 well you've understood them, but every time the Bureau makes a  
14 filing -- a proper filing you have an opportunity to respond  
15 to that filing in writing. So now a motion for summary  
16 decision has been filed. I would hope that you're planning to  
17 make a response to that motion.

18 MR. SCHOENBOHM: I am, but I received it via fax and  
19 I did not receive any of the exhibits attached to it so I  
20 don't --

21 JUDGE LUTON: Okay. I don't, I don't -- well --

22 MR. SCHOENBOHM: I should at least be allowed to  
23 have a true copy mailed to me with the exhibits.

24 JUDGE LUTON: I think so. A complete motion, you're  
25 certainly entitled to that.

1 MR. FITZ-GIBBONS: Your Honor, we're sending it by  
2 mail. We, we also faxed it for Mr. Schoenbohm's convenience.

3 JUDGE LUTON: Okay. Then I think, Mr. Schoenbohm,  
4 the time within which you must respond to that motion, and  
5 these time limitation are important because late filings can  
6 be dismissed or ignored simply because they're late. But I  
7 think that the -- whatever time the rules give -- provide,  
8 rather, for making a response to a motion for summary decision  
9 doesn't begin to run until the Bureau's filing is complete and  
10 if you've only received a -- or if there has only been filed a  
11 partial motion with some references not attached then the time  
12 will not run of course until, until that filing is, is  
13 properly made. And filing, as I understand it, doesn't have  
14 to do with your receipt of the documents, it has to do with  
15 the filing by the Bureau with the secretary. Is that right?

16 MR. FITZ-GIBBONS: That's my understanding, Your  
17 Honor. It was filed with the secretary yesterday.

18 JUDGE LUTON: Okay. So, the -- even though you've  
19 received the fax, Mr. Schoenbohm, I think what you need to pay  
20 attention to is the date stamp, the secretary's stamp that  
21 you'll find on the pleading when you do receive it.

22 MR. SCHOENBOHM: I understand. Of course, makes it  
23 a little difficult not having the entire --

24 JUDGE LUTON: You're going to have the -- but what  
25 I'm saying is that you will have -- you will receive the

1 entire thing. You don't need to react to the facts, in other  
2 words.

3 MR. SCHOENBOHM: Yeah. Well, I --

4 JUDGE LUTON: You don't need to react to that. You  
5 need to react to the filing that the Bureau has made with the  
6 secretary in all of its completeness.

7 MR. SCHOENBOHM: I understand.

8 JUDGE LUTON: Attachments, everything else included.

9

10 MR. FITZ-GIBBONS: Your Honor, if I may clarify.

11 JUDGE LUTON: Yes.

12 MR. FITZ-GIBBONS: We didn't fax all of the  
13 attachments because of their voluminousness.

14 JUDGE LUTON: Um-hum.

15 MR. FITZ-GIBBONS: I did, I did however describe  
16 these court papers to Mr. Schoenbohm and I believe, I believe  
17 he, he has copies of those.

18 JUDGE LUTON: Okay. He may, he may have or he may  
19 not. I think even so the Bureau's burden is to, to serve a  
20 complete package. Presumably you filed, Mr. Fitz-Gibbons, a  
21 complete package with the secretary.

22 MR. FITZ-GIBBONS: Yes, Your Honor.

23 JUDGE LUTON: Albeit voluminous, it was nevertheless  
24 complete. That is what Mr. Schoenbohm presumably will  
25 receive.

1 MR. FITZ-GIBBONS: Yes, Your Honor.

2 JUDGE LUTON: And, and when he does -- well, he will  
3 then tally the time for response from the time that that big  
4 package was filed with the secretary.

5 Mr. Schoenbohm, I don't think -- since the filing  
6 was made with the secretary, a complete filing, I don't think  
7 you'll really need to be concerned about not receiving the  
8 attachments to the motion because I think you will receive  
9 them.

10 MR. SCHOENBOHM: I understand.

11 JUDGE LUTON: Again, you have a certain amount of  
12 time to make a response to that filing, Mr. Schoenbohm.

13 MR. SCHOENBOHM: I understand that.

14 JUDGE LUTON: Okay, and I would urge you to make  
15 that response within that time. And I don't know whether you  
16 know what it takes to defeat a motion for summary decision or  
17 not, but that's what I'll be looking for.

18 MR. SCHOENBOHM: It doesn't state that in the rules,  
19 by the way.

20 JUDGE LUTON: Well, it, it -- I think my  
21 recollection is that it, it does somewhere in there and you'll  
22 just have to find that.

23 MR. SCHOENBOHM: This is under Part 1, correct?

24 JUDGE LUTON: I think so. I believe there's a  
25 discrete section on motions for summary decision. But in



1 any --

2 MR. SCHOENBOHM: I see where it says this is  
3 permitted for the Commission to do it. It doesn't essentially  
4 say what I --

5 JUDGE LUTON: Yeah, well --

6 MR. SCHOENBOHM: -- has to be met, what burden has  
7 to be met or what --

8 JUDGE LUTON: Well, you're going to need some kind  
9 of response and if you can -- well, I can't tell you anything  
10 other than to make the response the way that you see fit to do  
11 it.

12 MR. SCHOENBOHM: One thing I'd like to mention, I  
13 would like to get a stipulation from the Bureau that if I can  
14 establish that the federal conviction was vacated that the  
15 action is dismissed.

16 JUDGE LUTON: You would like a stipulation saying  
17 that the conviction was vacated?

18 MR. SCHOENBOHM: The federal conviction to which  
19 this action is based on has been vacated --

20 JUDGE LUTON: Um-hum.

21 MR. SCHOENBOHM: -- that the act should be  
22 dismissed.

23 JUDGE LUTON: Okay. Well, I, I don't know whether  
24 the Bureau is prepared to make such a stipulation now or  
25 whether it'll want to talk to you privately about the matter